



Reprinted
April 7, 2009

ENGROSSED SENATE BILL No. 263

DIGEST OF SB 263 (Updated April 6, 2009 2:34 pm - DI 109)

Citations Affected: IC 11-10; IC 12-24; IC 16-33; IC 20-21; IC 20-22; IC 20-26.

Synopsis: Public school compensation payment schedules. Allows a public school corporation, the school for the blind and visually impaired, the school for the deaf, certain correctional institutions, certain state institutions, and the soldiers' and sailors' childrens' home to enter into a 13 month compensation payment schedule for work performed during a normal nine or ten month school year. Makes technical changes.

Effective: July 1, 2009.

Walker, Mishler, Kruse

(HOUSE SPONSORS — PORTER, SMITH M, CHEATHAM)

January 7, 2009, read first time and referred to Committee on Education and Career Development.

February 5, 2009, amended, reported favorably — Do Pass.

February 10, 2009, read second time, ordered engrossed.

February 11, 2009, engrossed.

February 12, 2009, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 25, 2009, read first time and referred to Committee on Education.

April 2, 2009, amended, reported — Do Pass.

April 6, 2009, read second time, amended, ordered engrossed.

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ES 263—LS 7272/DI 58+



Reprinted
April 7, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 263

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-10-5-5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 5. (a) Notwithstanding IC 22-2-5-2, the correctional
4 institution and:**

5 (1) an employee if there is no representative described under
6 subdivision (2) or (3) for that employee;

7 (2) the exclusive representative of its certificated employees
8 with respect to those employees; or

9 (3) a labor organization representing its noncertificated
10 employees with respect to those employees;
11 may agree in writing to a wage payment arrangement.

12 (b) A wage payment arrangement under subsection (a) may
13 provide that compensation earned during a school year may be
14 paid:

15 (1) using equal installments or any other method; and

16 (2) over:

17 (A) all or part of that school year; or

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(B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

(1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or

(2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the correctional institution remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the correctional institution may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

SECTION 2. IC 12-24-3-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Notwithstanding IC 22-2-5-2, the state institution and:

(1) an employee if there is no representative described under subdivision (2) or (3) for that employee;

(2) the exclusive representative of its certificated employees with respect to those employees; or

(3) a labor organization representing its noncertificated employees with respect to those employees; may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

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(1) using equal installments or any other method; and

(2) over:

(A) all or part of that school year; or

(B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

(1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or

(2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the state institution remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the state institution may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

SECTION 3. IC 16-33-4-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) Notwithstanding IC 22-2-5-2, the home and:

(1) an employee if there is no representative described under subdivision (2) or (3) for that employee;

(2) the exclusive representative of its certificated employees with respect to those employees; or

(3) a labor organization representing its noncertificated employees with respect to those employees;

may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may

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(1) using equal installments or any other method; and

(2) over:

(A) all or part of that school year; or

(B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen

(13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

(1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or

(2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the home remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the home may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

SECTION 4. IC 20-21-4-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Notwithstanding IC 22-2-5-2, the school and:

(1) an employee if there is no representative described under subdivision (2) or (3) for that employee;

(2) the exclusive representative of its certificated employees with respect to those employees; or

(3) a labor organization representing its noncertificated employees with respect to those employees;

may agree in writing to a wage payment arrangement.

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(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

(1) using equal installments or any other method; and

(2) over:

(A) all or part of that school year; or

(B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen

(13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

(1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or

(2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the school remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the school may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

SECTION 5. IC 20-22-4-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Notwithstanding IC 22-2-5-2, the school and:

(1) an employee if there is no representative described under subdivision (2) or (3) for that employee;

(2) the exclusive representative of its certificated employees with respect to those employees; or

(3) a labor organization representing its noncertificated

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employees with respect to those employees;
may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

(1) using equal installments or any other method; and

(2) over:

(A) all or part of that school year; or

(B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

(1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or

(2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the school remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the school may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

SECTION 6. IC 20-26-5-32.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 32.2. (a) Notwithstanding IC 22-2-5-1, a school corporation and:

(1) an employee if there is no representative described under subdivision (2) or (3) for that employee;

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(2) the exclusive representative of its certificated employees with respect to those employees; or

(3) a labor organization representing its noncertificated employees with respect to those employees;

may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

(1) using equal installments or any other method; and

(2) over:

(A) all or part of that school year; or

(B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

(1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or

(2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), a school corporation remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of wages earned and unpaid.

(g) Employment with a school corporation may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

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COMMITTEE REPORT

Madam President: The Senate Committee on Education and Career Development, to which was referred Senate Bill No. 263, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-33-4-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23. (a) Notwithstanding IC 22-2-5-2, the home and:**

- (1) an employee if there is no representative described under subdivision (2) or (3) for that employee;**
- (2) the exclusive representative of its certificated employees with respect to those employees; or**
- (3) a labor organization representing its noncertificated employees with respect to those employees;**

may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

- (1) using equal installments or any other method; and**
- (2) over:**
 - (A) all or part of that school year; or**
 - (B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.**

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

- (1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or**
- (2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.**

(d) Absent an agreement under subsection (a), the home remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable

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under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the home may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

SECTION 2. IC 20-21-4-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Notwithstanding IC 22-2-5-2, the school and:

- (1) an employee if there is no representative described under subdivision (2) or (3) for that employee;
- (2) the exclusive representative of its certificated employees with respect to those employees; or
- (3) a labor organization representing its noncertificated employees with respect to those employees;

may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

- (1) using equal installments or any other method; and
- (2) over:
 - (A) all or part of that school year; or
 - (B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

- (1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or
- (2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the school remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment

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arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the school may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

SECTION 3. IC 20-22-4-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Notwithstanding IC 22-2-5-2, the school and:

- (1) an employee if there is no representative described under subdivision (2) or (3) for that employee;
- (2) the exclusive representative of its certificated employees with respect to those employees; or
- (3) a labor organization representing its noncertificated employees with respect to those employees;

may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

- (1) using equal installments or any other method; and
- (2) over:
 - (A) all or part of that school year; or
 - (B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

- (1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or
- (2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the school

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remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the school may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year."

Page 1, line 3, delete "IC 22-2-5-2," and insert "IC 22-2-5-1,".

Page 1, line 5, delete "; or" and insert "if there is no representative described under subdivision (2) or (3) for that employee;".

Page 1, line 7, after "employees;" insert "or

(3) a labor organization representing its noncertificated employees with respect to those employees;".

Page 1, line 16, delete "twelve (12)" and insert "**thirteen (13)**".

Page 1, line 17, after "the" insert "**wage payment arrangement**".

Page 2, line 3, delete "twelve (12)" and insert "**thirteen (13)**".

Page 2, line 12, delete "shall pay each employee:" and insert "**remains subject to IC 22-2-5-1.**".

Page 2, delete lines 13 through 19, begin a new paragraph and insert:

"(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2."

Page 2, line 20, delete "(e)" and insert "**(f)**".

Page 2, line 21, delete "school corporation shall pay the" and insert "**amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of wages earned and unpaid.**".

Page 2, delete lines 22 through 26, begin a new paragraph and insert:

"(g) Employment with a school corporation may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

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(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 263 as introduced.)

LUBBERS, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred Senate Bill 263, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 31, delete "IC 20-26-5-32" and insert "**IC 20-26-5-32.2**".

Page 4, line 33, delete "32." and insert "**32.2**".

and when so amended that said bill do pass.

(Reference is to SB 263 as printed February 6, 2009.)

OXLEY, Chair

Committee Vote: yeas 12, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 263 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 11-10-5-5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5. (a) Notwithstanding IC 22-2-5-2, the correctional institution and:**

- (1) an employee if there is no representative described under subdivision (2) or (3) for that employee;**
- (2) the exclusive representative of its certificated employees**

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with respect to those employees; or
 (3) a labor organization representing its noncertificated employees with respect to those employees;
 may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

- (1) using equal installments or any other method; and
- (2) over:
 - (A) all or part of that school year; or
 - (B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

- (1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or
- (2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the correctional institution remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the correctional institution may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

SECTION 2. IC 12-24-3-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Notwithstanding IC 22-2-5-2, the state institution and:

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- (1) an employee if there is no representative described under subdivision (2) or (3) for that employee;
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- (2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the state institution remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the state institution may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

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(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year."

Renumber all SECTIONS consecutively.

(Reference is to ESB 263 as printed April 3, 2009.)

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